



July 21, 2000

Mr. Edward R. Smith, Jr.
Special Assistant to the Superintendent
Chief, Intergovernmental Relations Department
Dallas Public Schools
3700 Ross Avenue, Box 9
Dallas, Texas 75204-5491

OR2000-2758

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137463.

The Dallas Independent School District (the "district") received a written request for all documents pertaining to the district's proposed lease of certain property. The information at issue pertains to an RFP issued by the district for the lease of office space.¹ You contend that the requested information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information and other related internal documents while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bid or proposal information from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

You explain that although the school board approved a proposed agreement with one of the proposers, you anticipate that approval being rescinded on the advice of the district's legal department. Consequently, you inform us that the district

¹You state that the district has released other requested information to the requestor.

is currently in the process of soliciting proposals and gathering information regarding the location and lease price for several properties. If the District were required to release the requested information, which includes the location and price analysis information, to the media, the district's negotiation position would be compromised. . . . The selection and approval of the successful bidder, any contract negotiation and execution of the contract remain pending. The bids that have been and will be received may not be approved and re-bids may be necessary. If [the district] is required to release this information to the media, the price information provided by the bidders will be made available to their competitors before the District has had the opportunity to award the contract. If the bids are all rejected and re-bidding is necessary, the release of the information will give an advantage to the original bidders' competitors.

Because you state that the district has not yet awarded a contract regarding the lease agreement, we conclude that the district may withhold the information at issue at this time pursuant to section 552.104. Release of this information during the time that competitors may clarify, modify, or withdraw their proposals could result in an advantage to the other competitors for the contract or damage the district's ability to obtain truly competitive bids.

Because we resolve your request under section 552.104, we need not address the applicability of the other exception you raise, section 552.105 of the Government Code.² This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

²However, once the leasing contract is in effect, neither section 552.104 nor 552.105 will serve to protect the requested information. Open Records Decision No. 222 (1979).

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/ljp

Ref: ID# 137463

Encl. Submitted documents

cc: Mr. Brett Shipp
WFAA-TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)